IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16156 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAILESHBHAI S/O CHUNILAL ALIASCHIMANBHAI RANA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16156 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 25/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by Police Commissioner, Vadodara City, on 30th of July, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 30th of July, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration 4 criminal cases registered against the petitioner, under the Bombay Prohibition Act, on August 30, 2003, November 5, 2003, January 22, 2004 and July 10, 2004, three at City Police Station and one at Prohibition Police Station, North Zone. It is alleged that in these four cases the petitioner was found in possession of country liquor of quantity of 18 liters in two cases and 69 liters and 30 liters in remaining two cases. The detaining authority took into consideration the fact of filing four cases against the petitioner and examined thoroughly the investigation papers in these cases. From the above material, the detaining authority came to the conclusion that the petitioner was dealing in storing, selling and transporting the country liquor. The detaining authority came to the conclusion that the activities of the petitioner were prejudicial to the maintenance of public order and adversely affecting the public health. The detaining authority considered that the activities of the petitioner were required to be prevented forthwith and the steps under the general law were likely to take time. The detaining authority came to the conclusion that there was no other alternative except to pass order of detention of the petitioner under the PASA Act. Therefore, the detaining authority passed the order of detention of the petitioner which is under challenge in this petition.

4. Learned Advocate Ms.Krishna Mishra for the petitioner and learned AGP Mr. HM Prachchhak for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the sole issue that whether there was credible material placed before the detaining authority to come to the conclusion that by the activities of the petitioner the public order was disturbed and public health was adversely affected.

6. To arrive at the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining relied upon the investigating papers in four cases registered against the petitioner. Out of these four cases, two offences came to be registered against the petitioner in August 2003 and November 2003 while the remaining two cases are registered in January 2004 and July 2004. Thus, the cases registered against the petitioner in 2003 are very old cases to be taken into consideration. Even going through the investigating papers in all the four cases, it is revealed that, at the most, petitioner was found in possession of country liquor in some quantity. These cases are filed against the petitioner because of the breach of law and order on the part of the petitioner. Nothing is revealed through the investigating papers placed on record that the activities of the petitioner were affecting public at large or public health. Nothing is also revealed that the activity of the petitioner caused harm, danger or feeling of insecurity among the public or section of the people nor it is apparent from the material placed on record that the activities of the petitioner was adversely affecting the public health. Thus, though for the breach of law and order, cases are filed against the petitioner, which will be tried according to law and and petitioner may be punished, if found guilty, but surely the act constituting the offences as revealed from the investigating papers have no bearing at all to the maintenance of public order. In this view of the matter, there was no credible material before the detaining authority to infer that the activities of the petitioner was prejudicial to the maintenance of public order. Thus the subjective satisfaction arrived at by the detaining authority in this respect is not legal, valid or in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by Police Commissioner, Vadodara City, on 30th of July 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Saileshbhai S/o Chunilal alias Chimanbhai Rana is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair